

REMARKS

Reconsideration of the application is respectfully requested in view of the amendments, the terminal disclaimer and the statement under 37 C.F.R. § 3.73(b) filed with this paper, and the discussion presented below. The amendments are supported by the application as filed and no new matter has been added by any of the amendments.

Claims 1, 11, and 12 are amended. Support for the amendments will be found in the specification as filed at page 11, line 32 to page 12, line 27 and page 17, line 7 to page 18, line 12. Note especially page 11, line 32 to page 12, line 6 (definition of pit ratio) and page 12, lines 24-27 and page 17, lines 24-29 (maximizing characteristic of pit ratio to minimize spherical aberration).

Claims 1, 4, 5, and 7-12 are now present in this application.

Discussion

1. Interview with Examiner Gupta

The Examiner mailed a PTOL-413 summary of the telephone interview of March 28, 2007 with the undersigned attorney. The Examiner's summary of the substance of the interview is believed to be correct.

2. Rejection of Claims 1, 4, 5, and 7-12 under 35 U.S.C. § 112, Second Paragraph

The Examiner rejected the pending claims 1, 4, 5, and 7-12 as being indefinite for not explaining the term "pit ratio" further, at least by indicating what it is used for and for not providing antecedent basis.

The last paragraph of claim 1 is amended to read:

wherein the characteristic obtaining unit is configured to detect a pit level and at least one of a read level, a write level and a recording power according to a light reflected from the optical recording medium while the test recording unit performs the test recording, wherein the pit level represents a level of the optical beam reflected from the optical disk while the optical beam is forming a pit during the test recording operation, and to obtain the characteristic of a pit ratio, the pit ratio representing the ratio of one of the read level, the write level or the recording power to the pit level, wherein the spherical aberration is minimized when the characteristic of the pit ratio is maximized.

The pit ratio thus is "explained further" and how the characteristic of the pit ratio relates to minimization of the spherical aberration is pointed out. In addition, antecedent basis is provided for "pit ratio." It is believed that the amendment of claim 1 serves to particularly point out and distinguish the subject matter that is claimed and that this rejection should be withdrawn.

Claims 11 and 12 are also amended in a similar manner to overcome the indefiniteness rejection. The indefiniteness rejection of these claims also should be withdrawn.

3. The Rejection of Claims 1, 11, and 12 for Non-Statutory Double Patenting

The Examiner rejected claims 1, 11, and 12 on the ground of non-statutory or obviousness double patenting as being unpatentable over claims 1 and 7 of U.S. patent application 10/627,131.

A rejection based on a nonstatutory type of double patenting can be avoided by filing a terminal disclaimer in the application or proceeding in which the rejection is

made. M.P.E.P. § 804.02 (citing *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Knohl*, 386 F.2d 476, 155 USPQ 586 (CCPA 1967); and *In re Griswold*, 365 F.2d 834, 150 USPQ 804 (CCPA 1966)). Section 804.02 of the M.P.E.P. notes that the filing of a terminal disclaimer to obviate a rejection based on nonstatutory double patenting is not an admission of the propriety of the rejection.

Applicants enclose the assignee's disclaimer of the terminal part of the statutory term of any patent which would extend beyond the expiration date of the full statutory term of any patent granted on pending reference application number 10/627,131. This is an executed form PTO/SB/25. A statement under 37 C.F.R. § 3.73(b) is also included in order to establish the right of the assignee to take this action.

The rejection of claims 1, 11, and 12 on the ground of non-statutory or obviousness double patenting should be withdrawn.

4. The Rejection of "All Other Claims"

The Examiner said that "[a]ll other claims are rejected with their respective parent claim 1," presumably for double patenting. In the interview of March 28, 2007 the Examiner explained that this rejection refers to claims 4, 5, and 7-10, and is really an objection to these claims as depending on a rejected base claim. Claim 1, as shown above, is allowable. It is respectfully submitted that claims 4, 5, and 7-10 are allowable at least in view of their dependency on claim 1. The objection to claims 4, 5, and 7-10 should be withdrawn.

Conclusion

In view of the above, the Applicants submit that the application is now in condition for allowance and respectfully urge the Examiner to pass this case to issue.

The Examiner is respectfully invited to telephone the undersigned attorney as needed in order to advance the examination of this application.

* * *

The Commissioner is authorized to charge any additional fees which may be required or credit overpayment to deposit account no. 12-0415. In particular, if this response is not timely filed, then the Commissioner is authorized to treat this response as including a petition to extend the time period pursuant to 37 C.F.R. § 1.136(a) requesting an extension of time of the number of months necessary to make this response timely filed and the petition fee due in connection therewith may be charged to deposit account no. 12-0415.

I hereby certify that this correspondence is being deposited with the United States Post Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on June 19, 2007.

Lucy C. Derby

(Name of Person Transmitting)

(Signature)

June 19, 2007

(Date)

Respectfully submitted,

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encls. terminal disclaimer

statement under 37 C.F.R. § 3.73(b)

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